

Exhibit 4

From: Ehrlich, Stephen (CIV) <Stephen.Ehrlich@usdoj.gov>
Sent: Friday, October 05, 2018 5:39 PM
To: Goldstein, Elena; Bailey, Kate (CIV); Freedman, John A.; zzz.External.DHo@aclu.org; Federighi, Carol (CIV); Coyle, Garrett (CIV); Kopplin, Rebecca M. (CIV); Halainen, Daniel J. (CIV); Tomlinson, Martin M. (CIV); Wells, Carlotta (CIV)
Cc: zzz.External.SBrannon@aclu.org; zzz.External.PGrossman@nyclu.org; Colangelo, Matthew; Bauer, Andrew; Gersch, David P.; Grossi, Peter T.; Weiner, David J.; Young, Dylan Scot; Kelly, Caroline; Saini, Ajay; Wood, Laura
Subject: RE: Several outstanding matters
Attachments: Abowd Documents Considered.zip

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Counsel,

With respect to our clawback request, the highlighted version of Dr. Abowd's expert disclosure was a draft for DOJ review, and was thus privileged work product. Please destroy the highlighted version of Dr. Abowd's expert disclosure. Documents considered by Dr. Abowd are attached.

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch
202-305-9803 | stephen.ehrlich@usdoj.gov

From: Goldstein, Elena [mailto:Elena.Goldstein@ag.ny.gov]
Sent: Tuesday, October 02, 2018 10:01 PM
To: Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Freedman, John A. <John.Freedman@arnoldporter.com>; DHo@aclu.org; Federighi, Carol (CIV) <CFederig@CIV.USDOJ.GOV>; Coyle, Garrett (CIV) <gcoyle@CIV.USDOJ.GOV>; Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>; Halainen, Daniel J. (CIV) <dhalaine@CIV.USDOJ.GOV>; Tomlinson, Martin M. (CIV) <mtomlins@CIV.USDOJ.GOV>; Ehrlich, Stephen (CIV) <sehrlich@CIV.USDOJ.GOV>; Wells, Carlotta (CIV) <CWells@CIV.USDOJ.GOV>
Cc: SBrannon@aclu.org; PGrossman@nyclu.org; Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Bauer, Andrew <Andrew.Bauer@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Grossi, Peter T. <Peter.Grossi@arnoldporter.com>; Weiner, David J. <David.Weiner@arnoldporter.com>; Young, Dylan Scot <Dylan.Young@arnoldporter.com>; Kelly, Caroline <Caroline.Kelly@arnoldporter.com>; Saini, Ajay <Ajay.Saini@ag.ny.gov>; Wood, Laura <Laura.Wood@ag.ny.gov>
Subject: RE: Several outstanding matters

Counsel,

With respect to the supplemental administrative record search terms and custodians, please advise whether you intend to produce these documents by the close of business tomorrow. If not, Plaintiffs will seek relief from the Court. As you are aware, the Court ordered that supplementation of the Administrative Record was to be completed on July 26 and Plaintiffs filed their motion to compel these documents on August 31. Soon after, Defendants advised that they would voluntarily comply, and on September 6, Plaintiffs agreed to ask the Court

to hold that motion in abeyance. By September 10, the parties had substantially agreed on terms and custodians; more than two weeks later, on September 26, Defendants advised for the first time that these terms yielded results that were too large for Defendants to efficiently process. Defendants requested that Plaintiffs further narrow the scope of the search terms, and we agreed to a narrower search on September 28. However, more than a month after Plaintiffs' initial motion to compel, Defendants now indicate only that they are "reviewing and processing" the materials at issue, and will not commit to any date certain for production. While Plaintiffs have been exceedingly flexible with respect to this production, and have repeatedly acceded to Defendants' requests to narrow the scope of the searches at issue, the discovery timeline mandates that these documents be produced forthwith. Accordingly, kindly confirm that Defendants will produce these materials by the close of business tomorrow. As you know, we have met and conferred on this request extensively, including on our August 31, September 5, and September 26 calls.

With respect to your clawback request regarding the highlighted version of Dr. Abowd's expert disclosure that you produced yesterday, we have sequestered the document as required by ECF No. 296 and Rule 26(b)(5)(B). To enable us to determine whether to contest this claim of privilege, as permitted by ECF No. 296 and Rule 26(b)(5)(B), please explain your claim that the report is work product that was produced in error. We note in particular that Defendants' email of 9:04pm yesterday specifically identified this report in your production and noted that it contains "yellow highlights indicating that a new footnote identifies the source of the yellow-highlighted item." Please advise how the identification of Dr. Abowd's sources was not already required by Rule 26. As noted, we have sequestered the document pending resolution of your clawback request, and are aware of our obligations under 26(b)(5)(B) not to use the information until your privilege claim is resolved.

Also -- attached please find a deposition notice for Dr. Abowd's testimony for September 12.

Best,
Elena

Elena Goldstein | Senior Trial Counsel

Civil Rights Bureau

New York State Office of the Attorney General

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From: Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>

Sent: Tuesday, October 2, 2018 7:46 PM

To: Freedman, John A. <John.Freedman@arnoldporter.com>; Goldstein, Elena <Elena.Goldstein@ag.ny.gov>; DHo@aclu.org; Federighi, Carol (CIV) <Carol.Federighi@usdoj.gov>; Coyle, Garrett (CIV) <Garrett.Coyle@usdoj.gov>; Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>; Halainen, Daniel J. (CIV) <Daniel.J.Halainen@usdoj.gov>; Tomlinson, Martin M. (CIV) <Martin.M.Tomlinson@usdoj.gov>; Ehrlich, Stephen (CIV) <Stephen.Ehrlich@usdoj.gov>; Wells, Carlotta (CIV) <Carlotta.Wells@usdoj.gov>

Cc: SBrannon@aclu.org; PGrossman@nyclu.org; Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Bauer, Andrew <Andrew.Bauer@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Grossi, Peter T. <Peter.Grossi@arnoldporter.com>; Weiner, David J. <David.Weiner@arnoldporter.com>; Young, Dylan Scot <Dylan.Young@arnoldporter.com>; Kelly, Caroline <Caroline.Kelly@arnoldporter.com>; Saini, Ajay

<Ajay.Saini@ag.ny.gov>

Subject: Several outstanding matters

Counsel—

I write regarding several outstanding matters:

- We don't believe that we have received a subpoena for Dr. Abowd's expert deposition on the 12th. With apologies if we've somehow overlooked it, please send us his subpoena at your earliest convenience.
- Please provide dates of availability for deposition of the experts on which you rely for rebuttal.
- Secretary Ross will be unavailable during trial as he will be out of the country; accordingly, to the extent his deposition goes forward, we wanted to let you know this as a courtesy.
- Regarding the search terms discussed by the parties last week, we have updated our searches to include the terms proposed by John Freedman on 9/28. We are reviewing and processing potentially responsive documents according to the search terms agreed upon by the parties last week.
- Consistent with our representation on the September 26 meet and confer, we began running the next production of DOJ materials early yesterday morning. Because that production is unusually large—more than 18,000 pages total—it is taking longer to complete than typical, and is still in process with our lab. We anticipate the production will be complete tomorrow morning and will overnight disks to you promptly.
- We also have received focus-group materials cleared for release through the DRB. Our lab is processing/Bates stamping those materials as well and they also should be ready in the morning.
- The highlighted version of Dr. Abowd's expert disclosure sent to you last night is privileged work product and was produced in error. Pursuant to Rule 26 and the parties' clawback agreement, ECF No. 296, please destroy this version of Dr. Abowd's disclosure. We will be in touch soon regarding the documents on which Dr. Abowd relied.

Best,

Kate Bailey

Trial Attorney

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